IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3872 of 2003

with

SPECIAL CIVIL APPLICATION No 4635 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHAVESH A SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3872 of 2003
   MR BHASKAR TANNA, SR.ADVOCATE, for
   TANNA ASSOCIATES for Petitioner No. 1-5
   MS MEETA PANCHAL, AGP for Respondent No. 1-2,4
   MR S.N.SHELAT, LD. SR.COUNSEL WITH MR MITUL K.SHELAT, for Respondent No. 3
   MR BM MANGUKIYA for Respondent No. 5
2. Special Civil Application No. 4635 of 2003
   MR BM MANGUKIYA for Petitioner No. 1
   MS MEETA PANCHAL, AGP for Respondent No. 1

MR S.N.SHELAT, LD. SR.COUNSEL WITH MR. MITUL K.SHELAT for Respondent No.3
MR AC GANDHI, for Respondent Nos. 5 & 6.

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 14/10/2003

ORAL COMMON JUDGEMENT

1. Both these petitions are moved by the medical students anticipating and seeking admissions in Post Graduate Courses (PG Courses for short) in Govt. Medical College, Bhavnagar. All the petitioners have cleared their M.B.B.S. Examinations from the college affiliated with Bhavnagar University. Though the nature of reliefs prayed by the respective petitioners in both these petitions are apparently different, but the basic issues raised and points of submissions made by them are similar and it centres round the modification in the policy of admission in PG Courses including the amendment made in Rule 4.1, both these petitions are heard together finally and are disposed of by this Common Judgment. For the sake of convenience and to appreciate the say of the petitioners, it is necessary to state the facts in brief of both the petitions.

2. The petitioners of Spl.C.A.No.3872/2003 are five Doctors expecting and claiming the admissions in Government Medical College, Bhavnagar in their Post Graduate Courses, by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, have prayed for appropriate writ, order or directions praying for quashing and setting aside the decision of respondents authorities and especially respondent nos. 3 & 4 to implement 100 point roster to total number of seats available in PG Courses in Govt.Medical College, Bhavnagar and to declare the Government Resolution (GR for short) dated 2.6.2003 as illegal and arbitrary. It is also prayed that a positive direction should be issued to the authorities concerned offering admissions to implement 100 point roster to PG Courses subjectwise -departmentwise.

3. The petitioner of Spl.C.A. No.4635/2003, by invoking jurisdiction of this Court under Article 226 of the Constitution of India, has prayed to issue a writ of mandamus or any other appropriate writ, order or direction in the like nature to quash the bracketed portion of Rule 4.1 of the Rules viz. "For the first batch of May 2001, students shall be exempted for the

first year admission " as ultra vires of the Article 14 of the Constitution of India. The petitioner was admitted in 1st M.B.B.S. Course in Govt. Medical College, Bhavnagar in the year 1996 and he completed his M.B.B.S. Degree in August-2001. Examinations of Final Year M.B.B.S. was taken in the month of April-2001 and after result which was declared in the month of August viz. on 2.8.2001, he has undergone and completed One Year's practical training- internship in August-2002. According to the petitioner, Bhavnagar University has started Medical College in the year 1995 and 1st Batch of 50 students in 1st M.B.B.S. was admitted in July/August,1995. This first batch of the only medical college affiliated with Bhavnagar University cleared its Final M.B.B.S. Examinations in May-2000. Students of this batch completed their internship in or about May-2001. Bhavnagar University had no PG Courses, but it was under contemplation. It is contended by the petitioner that the PG Courses are being started in Govt.Medical College, Bhavnagar from January-2003 and the process to admit first batch of PG Courses has just begun. Interviews for the admissions in PG Courses were fixed on 4.4.2003. Meanwhile, the students of first batch who have cleared their Final M.B.B.S. Examinations in the month of May-2000, approached this Court ventilating the grievance about reservation and, therefore, the said interviews were postponed. Bhavnagar University has framed Rules for admissions to PG Courses and the said Rules provide that preference shall be given to the candidate of not more than one year's standing after completion of internship of the very University. While framing the said Rules, exemption from preference has been conferred upon the 1st batch of May-2001. Rule-4.1 of the Rules creates unhealthy competition between the 1st batch and 2nd batch and late-latifs of 1st batch have been conferred with the entitlement to compete with the petitioner and other students. According to the petitioner, Medical Council of India has also framed Rules named and called as "Medical Council of India Post Graduation Medical Education Regulations,2000" and Rule.9 provides the guidelines for admissions to PG Courses. Gujarat University as well as practically all the universities in the State provides the preference to fresh batch and the exemption provided by the Bhavnagar University to 1st batch vide Rule 4.1 seriously prejudices the right of the petitioner. According to the petitioner, that act of giving exemption from the rule of preference to 1st batch is expressly illegal and arbitrary and, therefore, requires to be quashed. Rule 4.1 curtails the right of the petitioner inasmuch as if the said exemption is granted in favour of the 1st batch,

then the petitioner will have no chance as the name of the petitioner would appear in the common seniority (merit) list of 1st & 2nd batch. There are limited 12 seats for PG Course. Considering the percentage of reserve seats, right of the petitioner to get admission in PG Course would be nullified for all time to come. The State all throughout has adopted the principle that fresh batch shall be preferred to in all professional courses and there was no reason for the Bhavnagar University to deviate therefrom. There is no logic or justification in giving go-by to the rule of preference or to deviate from the consistent policy adopted by the State all throughout. So, the petitioner has prayed for a writ of mandamus or any other appropriate writ, order or direction quashing the that much part of Rule 4.1 and it is prayed that words "for the first batch of May-2001 students shall be exempted in first year admission" be deleted and quashed. It is also prayed that the respondent University- Dean, Govt. Medical College be directed not to prepare joint merit list under Rule.4.1 of Rules for PG Admissions. The petitioner has also prayed for some alternative relief whereby it is prayed that at least the petitioner be given provisional admission in PG Course of his choice and only thereafter on availability of seats, students of first batch or any other students may be given admission.

4. Mr.K.V.Bhatt, Dean, Govt.Medical College, Bhavnagar - respondent no.4 has filed detailed reply affidavit whereby he explained the purpose and effect of R.4.1 giving exemption to 1st batch of students of very college/university when the said college/university is starting PG Courses for the first time since 1995 the year in which University started its own first medical college.

5. Both the petitions were moved in the month of April-2003 and pending hearing when it came to the notice of the petitioners of Spl.C.A.No.3872/2003 that respondent no.1 State of Gujarat has issued one GR on 2.6.2003 especially referring the present petition and so by amending the present petition, petitioners have also challenged the legality and validity of the said GR. In view of the order passed in Civil Application No.3022/2003 filed by ld. counsel Mr. Mangukia, this Court allowed the same and permitted one Dr.Narendra Jashabhai Barad to join as party respondent no.5 in the petition. This Dr. N.J.Barad claims that he belongs to a community recognised as "Socially & Economically Backward Class" (SEBC for short) and decision in the present petition would vitally affect his right to seek admission in PG Courses in the next term.

6. To appreciate the rival contentions, it is necessary to state certain facts. It is the say of the petitioners that the petitioners came to know that respondent No.4 Dean of Govt.Medical College, Bhavnagar was to implement 100 point roster for PG Courses to total number of seats available, whereas in all universities in the State as well as throughout the country, 100 point roster is applied subjectwise -departmentwise. The petitioners were informed that 100 point roster in reservation for recruitment to the post of Resident for SC/ST/SEBC candidates published by Government of Gujarat vide order dated 12.2.2001, would be applied subjectwise i.e. to number of seats available each year and in each subject. Copy of this 100 point roster is annexed at Annex.A to the petition. Thereafter, the petitioners were informed that respondent no.4 - Dean of Govt. Medical College proposes to implement 100 point roster to total number of seats available and not subjectwise -departmentwise as contemplated. Till academic year 2003-2004, various other universities like Gujarat University, Saurashtra University, MS University etc. have implemented 100 point roster subjectwise and in majority part of the country subjectwise admissions are given implementing 100 point roster. It is alleged that by making deviation from the prevalent practice, respondent no.4 wants to admit students as per 100 point roster against total number of seats available and not subjectwise. As per Rules, Rule-4 was required to put up on the notice board of Govt. Medical College, Bhavnagar inviting applications for PG Admissions mentioning the last date for submission of applications. On 4.4.2003, interviews were to be held and on 3.4.2003, this petition was moved. Petitioner no.1 was intimated vide interview call letter dated 25.3.2003 that he was to appear in interview on 4.4.2003 at 11.00 A.M. before the authority concerned. The petitioners along with other students when were came to know that 100 point roster is to be applied qua total number of seats and that too not subjectwise/ departmentwise, they raised objections against the implementation of the modified policy in writing in the form of representation dated 31.3.2003. This representation was not responded. On 2.4.2003, Director, Health & Medical Education, Gandhinagar (respondent no.2) was approached and detailed representation was made. The petitioner no.1 is one of the signatories of the said representation. On 4.4.2003, this Court while issuing notice making returnable on 9.4.2003, directed the respondents not to declare and/or implement the result of the interview without the prior permission of this Court. The Bhavnagar University is

having only one Medical College and has started MBBS Course in the year 1995. So, this was the first occasion for Bhavnagar University to start the PG Course and to offer admissions to the students. Undisputedly, the University is an autonomous body and can have its own policy, rules and regulations in all regards including the admission procedure in various faculties and subjects for the students who intend to prosecute their studies with that University. In the State of Gujarat, there are about four Universities other than Bhavnagar University having medical college or colleges affiliated to it. Respondent no.1 State has approved the Rules governing appointment of Residents at Govt.Medical Colleges attached to the hospitals in the State and these Rules are approved under Government Resolution H & PWD. No. MCG-1089-5528-J dated 5.12.1989. According to the petitioners, these Rules carving policy to implement 100 point roster is being implemented and has been implemented till academic year 2003-2004 by all other Universities in the State. On 4.7.2003, this Court had issued Rule as respondent no.5 had joined litigation. In the meanwhile, considering the submissions of ld. AGP Ms. Meeta Panchal and ld. counsel appearing for Bhavnagar University- respondent no.5, this Court granted interim relief in terms of para-16(c). On that day, Dr.S.D.Patel, Acting Dean of Govt. Medical College, Bhavnagar was also present and he appraised the Court of the fact that no interviews are held till this date. This decision of granting interim relief was challenged by way of filing appeal being L.P.A. No.660/2003. The Division Bench, in view of the copy of the Govt. Resolution dated 2.6.2003 placed before the Court on record before it, observed that "we are not commenting on the contents of that notification, because, the learned Senior Counsel for the respondents states that the original petitioners would challenge this notification by taking out a suitable amendment in the petition. Since, the entire controversy is pending before the learned Single Judge and the matter is coming up for the final hearing on 24.7.2003, we, after obtaining consensus of the learned counsel who have argued before us, direct that the process of interviews shall be commenced immediately and the concerned authority will take the interviews as per the rules applicable for the purpose and keep the result with them in a sealed cover, which process would be subject to any direction that may be given by the learned Single Judge in the petition."

It seems that in light of the directions given by the Division Bench, the appellant did not press the appeal and now the parties have argued before me on merits.

7. I have considered the contentions raised by the petitioners and the submissions advanced by ld. Sr.Counsel Mr. B.P.Tanna and the say of ld. Senior Counsel Mr.S.N.Shelat appearing for Bhavnagar University and Ms. Meeta Panchal appearing for Respondent Nos.1, 2 & 4 Dean, Govt. Medical College, Bhavnagar. The submissions of Mr. Mangukia, ld. counsel appearing for respondent no.5 and stand taken in two affidavits is also considered.

8. Bhavnagar University has Rules for admissions to PG Degree Medical Courses for the medical colleges affiliated with the University (other than MCh & DM). Roster point which is at Annex.E prepared by the PG Admission Committee is not subjectwise. Even between the list Annex.E and roster on reservation prepared and signed by the members of the Committee on 29.3.2003, there is difference to some extent. Roster point prepared by the said committee as per GR (page-78) is obviously different than the roster point shown at page no.77. It is contended by the Dean of Medical College that in light of the limited seats of the subjects, the Committee has decided to apply roster point in reference to total number of seats available,but not subjectwise. Simultaneously, the arrangement of the subject for the purpose alphabetically arranged by the Committee is prima facie found objective with the element of rationality, but in the background of many other relevant aspects as to the scope of spell out or mention the subjects in different way or manner and the addition in the subject in coming years or increase in seats in one or more subjects, sounds some apprehension of confusion and/or chaos. Certain facts brought to the notice of the Court by ld. Sr.Counsel Mr. S.N.Shelat and ld. AGP Ms. Meeta Panchal indicate that the University was not bent upon to offer admissions applying 100 roster against the seats available and selection of subject was to be offered to the students on their merits and the University has not thought of at any time for applying 100 point roster subjectwise.

9. In light of the decision of the Division Bench while dealing with above-numbered LPA, admission Committee has taken interviews and the Committee was directed to take interviews as per the rules applicable and in compliance of the order, the result has been tendered in the sealed cover to this Court. At present, that envelope is lying with the Registry in view of the directions issued by the Court vide order dated 6.10.2003. Considering the principles of legitimate

expectation as argued by ld. Sr.Counsel Mr. Tanna for the petitioners and the fact that there is no formal amendment in the relevant rules and especially rule-23, policy laid down by the GR in the form of Rules in the year 1989 which has been consistently followed till this academic year, requires to be followed in case of PG Admissions in Bhavnagar University. Initially, the proposition was accepted by respondent no.4, but it seems that because of intervention of some Under Secretary to the State of Gujarat, subsequently with a view to see that some students from reserved categories get admission in PG Courses, the formula to apply 100 point running roster qua number of seats available was introduced. Though the running roster is not amended, an attempt to change its effect has been made which has resulted into frustration and prejudice to the students who were legitimately expecting their admissions in PG Course in the subjects of their choice. Merely because Bhavnagar University offers admissions in PG Course for the first time, deviation at last moment was not required to be made. Different Govt. Medical Colleges may have affiliation with different universities, but the policy of the State Government at least should be consistent and in harmony. Unless the State Policy is not in accordance with the admission rules of a particular university, the university or the admission committee can insist upon the implementation of its own rules or regulations considering its autonomous status, but it is never the case nor the submissions from any side that Bhavnagar University was compelled to make some deviation from the policy of the State which has been consistently followed by all other government medical colleges since 1989 i.e. more than 12 to 13 years. None of the counsel has pointed out that 1989 policy was challenged before any competent Court on the point of its rationality, feasibility or its validity qua the percentage of reservation offered to various classes who require to be given some special treatment for their betterment and the balanced progress of the society at large. Ld. AGP Ms. Panchal during the course of oral submissions has fairly submitted that GR dated 2.6.2003 is issued to put the policy of the State on a better logical and rational footing. As observed by this Court in the decision in the case of Kumari Jayshree Chandrachud Dixit v/s State of Gujarat & Ors., reported in 20 GLR 614, the Government was supposed to announce the policy or decision to make change in the existing policy well in advance so it cannot be condemned or otherwise deprecated on account of so-called late announcement/ publication. Ld. Sr.Counsel Mr. Shelat and ld. AGP Ms. Panchal have placed reliance on the observations made in para-20 of

the said decision and ld. Sr.Counsel Mr. Tanna appearing for the petitioners has simultaneously stated that till 2.6.2003, there was no reason for respondent no.4 or the Committee to decide the admission to the students applying any other method than the prevailing method in all other government medical colleges affiliated with respective universities of the State when State Policy was not in any way conflicting or inconsistent with the Rules of Bhavnagar University. Actual admissions were not given because of the pendency of the present litigation and interim orders passed by the Court. So, it would not be appropriate, justified or legal to say that while giving actual admissions to the students either in the month of August, September or October,2003, the change proposed by the State vide GR No.2.6.2003, can not be termed as late publication of the policy. On the contrary, say of Ms. Panchal is very clear, of course, no formal affidavit from any government authority has been filed in the petition, but she being responsible officer representing the State can make a statement that GR dated 2.6.2003 is published because of the fact came to the notice of the government because of the present litigation and petition and, therefore, the government has declared the policy with an intention to see that the changed policy can be implemented from the next academic year. According to Ms. Panchal, it is the say of the State that change in policy framed in the year 1989 emerging from GR dated 2.6.2003 is to be implemented from the next academic year and government has not thought of its implementation immediately.

10. Undisputedly, the medical students in PG Courses are getting admissions twice in a year and normally the policy should be yearwise and it can not be batchwise. I am told that except in MS University, PG Students are offered admissions in the month of January & August every year and the idea of the government is that certain infirmities in the existing policy may be cured and improved and with that view only the GR dated 2.6.2003 has been issued. Though Bhavnagar University was to offer admissions for the first time to the students joining PG Courses, but it was the part of one academic year 2003-2004 and there can not be two different types of policies.

11. Ld. counsel Mr. Mangukia appearing for respondent no.5 in Spl.C.A. 3872/2003 has mainly assailed this petition by placing reliances on number of decisions and 3 decisions out of said decisions mainly deal with one ratio that the policy decision of the government or any other statutory body, should not be

made subject to the judicial review, unless it is unjust, discriminatory or malafide or is violative of rights flowing from the Constitution or it is otherwise detrimental to any statutory rights. Said decisions are:-

(i) Pareshkumar Mahendrabhai Shah and Another v/s State of Gujarat and others, AIR 1983 Gujarat 173;

(ii) Jayesh A.Joshipura v/s State of Gujarat and Ors., 25(2) GLR 761;

(iii) I.S.Azeez Basa and another v/s Union of India etc., AIR 1968 SC 662.

Placing reliance on the recent decision of the Apex Court in the case of NTR University of Health Sciences, Vijaywada v/s G.Babu Rajendra Prasad and another, reported in 2003 (Vol.V) SCC 350, it is argued by ld. counsel Mr. Mangukia that the decision to offer admissions to the PG Courses against the total number of seats available arranging subjectwise/ departmentwise by itself was a policy decision and it was within the jurisdiction and powers of admission committee and, therefore, ethicucy of that decision though was affecting some change in existing 1989 policy, can not be examined by the Court in exercise of the powers vested in the Court under Article 226 of the Constitution. Mr. Mangukia has also placed reliance on the decision reported in 1985(2) SCC 745 known as Sabarwal's case. The ratio of this decision, in light of the nature of disputes brought before the Court, would not help respondent no.5.

12. Ld.Sr.Counsel Mr. S.N.Shelat, referring to Rule 4.1 and the amendment made therein, has submitted that some preference has been given to the students who have cleared their M.B.B.S. examinations being the student of 1st batch. There was no scope for those students to get admissions in PG Courses as it is the Govt. Medical College, Bhavnagar which is the only medical college affiliated with Bhavnagar University having permission to start PG Courses and Medical Council of India, for the first time, granted permission for the same and, therefore, preference to compete has been given to the students who have completed their internship in previous year only. So, R.4.1 and the amendment made in the said rule provides uniform pattern. Reasonableness of the Rules can not be made subject of judicial scrutiny unless the Rules are found violative of any basic rights. Ld.

Sr.Counsel Mr. Shelat has placed reliance on number of decisions while developing his arguments and analysing the facts narrated in affidavit (page-66 para-4).

13. On the other hand, the petitioners submit that admission Committee when has decided to offer admissions arranging the subject alphabetically and to apply roster point against the seats available is inconsistent and contrary to the prevalent policy of the State and, therefore, modification in the admission policy before some days of arranging interviews for admissions is bad. It is highly detrimental to the students who are seeking and anticipating their admissions in PG Course under the principles of Legitimate Expectation. The admission process in Bhavnagar University has started much earlier i.e. in the month of March and therefore some change in consultation with one of the officers of the State Government without amending the rules of admission and policy of the government since 1989, could not have been given go-by and such an attempt is contrary to the observations and directions given by this Court in the decision in the case of Kumari Jayshree Chandrachud Dixit (supra). GR dated 2.6.2003 can not have at least retrospective effect to the students who were already in queue for the admissions in PG Course.

14. Ld. counsel Mr. Mangukia representing respondent no.5 submits that the decision of the admission Committee to offer admissions in a different way i.e. arranging the subjects alphabetically and applying running roster against the available seats is a rational decision which minimises the frustration to substantive extent, can not be made the subject matter of judicial scrutiny. Because of the interim prohibitory orders obtained by the petitioners of Spl.C.A. No.3872/2003, the process of admission had become stagnant and the observations made by the Division Bench while dealing with above-referred LPA can not be ignored. But for the GR dated 2.6.2003, certain directions are given by the Division Bench. GR dated 2.6.2003 itself refers the present petition and wish expressed by the petitioners. So, the said GR can be said to be an invited situation by the petitioners. Affidavit of Dean, Medical College, Bhavnagar materially supports the say of respondent no.5. When PG Course of only medical college affiliated with respondent University are in limited subjects and seats in those courses are still more limited i.e. only 12 seats, then the application of 100 point roster subjectwise as per 1989 policy would eliminate all SC/ST/SEBC students for long period and at least for entire academic year and, therefore, it is

argued that policy laid down of GR dated 2.6.2003 which is consistent to the policy decision taken by the admission Committee in the month of March 2003, should be held to be above judicial review and Spl.C.A. No.3872/2003 should be dismissed.

15. Considering the rival contentions, this Court finds that there is some substance in the say of the petitioners of Spl.C.A. No.3872/2003. During the course of hearing, ld. AGP Ms. Panchal has clarified that the policy emerging from GR dated 2.6.2003 is the policy declared in advance and this modified policy is to be implemented from the next academic year. Division Bench had directed the concerned authority to take interviews as per the rules applicable for the purpose and to keep the result with them in a sealed cover. Undisputedly, that sealed envelope now has been tendered before the Court and it is lying with the Registry. I am told that the University and the Admission Committee have adopted the existing policy i.e. policy of the government which is being followed consistently by all the government medical colleges affiliated to the various universities in the State since the academic year 1989-1990.

16. One more argument which is advanced by the ld. counsel appearing for the petitioners is that in all universities except in MS University, Vadodara wherein the State Government is offering admissions to students for PG Courses in the medical colleges affiliated with that University twice in a year i.e. in the month of January and thereafter in the month of August in one academic year, there can not be two policies of admission. Government and the Universities should be consistent in offering admission to all students who are aspiring for admission. Principle of Legitimate Expectation also has some role to play in the present case. So also, the decision of the University and the Government to apply the modified policy carved out by GR dated 2.6.2003 from next academic year is justified.

It is true that so far as admission in Government Medical College Bhavnagar is concerned, the college can admit 2nd batch students also in PG Courses. The University does not deny that it shall adopt the modify policy from the next academic year. In one another petition being Spl.C.A.No.12019/2003, Saurashtra University is the party-respondent qua the admission dispute in Government Medical College, Jamnagar and University has made a positive statement before this Court that it is going to adopt and implement GR from next academic year. In this very academic year i.e.

2003-2004, all the government medical colleges should be consistent qua the admission policy and there was no reason for the admission committee in the month of March-2003 to offer admissions in a different way as alleged by the petitioners. Ld. Sr.Counsel Mr. Tanna has rightly argued that though the petitioner has prayed that GR dated 2.6.2003 requires to be quashed, but in view of the statement made by ld. AGP Ms. Panchal, the petitioners are not serious if the larger question is not gone into. This GR is at the threshold before the Court in above-said Spl.C.A. No. 12019/2003 and while dealing with the facts of that case, this Court has accepted the stand of respondent State of Gujarat that the policy laid down by GR dated 2.6.2003 is not declared with an intention that the same be implemented forthwith and it is a policy declared in advance for the next academic year. So, without going into the merits or demerits of the said GR, the say of the petitioners of Spl.C.A.No.3872/2003 shall have to be accepted. Ld. Sr.Counsel Mr. Tanna, during the course of oral submissions, has made a positive statement that the exercise undertaken by the Admission Committee in taking interview and offering admissions as per rules applicable would be acceptable to the petitioners and, therefore, appropriate directions can be issued and should be issued and it shall be binding to the petitioners. The decision cited by ld. counsel Mr. Mangukia in light of the abovesaid facts and circumstances, would not help respondent no.5. The action of the Admission Committee in a different way on earlier occasion was the action not warranted. The State Government has directly and the University has indirectly conceded to the fact situation pleaded by the petitioners of Spl.C.A. No.3872/2003 and, therefore, petition shall have to be allowed to the above extent.

17. However, looking to the over all facts and circumstances, there are more than one reason and circumstances under which this Court accepts that the GR dated 2.6.2003 was not issued with an intention to implement forthwith. On the contrary it seems that considering the ratio of the decision in the case of Kumari Jayshree Chandrachud Dixit (supra), government has issued the GR in advance and this policy has been carved out with an intention to implement the same from next academic year uniformly in all Government Medical Colleges affiliated with the respective universities.

18. It is true that the Division Bench has referred to the GR dated 6.2.2003. Till that date, it seems that no party was knowing about the existence of this GR.

Direction given by the Division Bench entertaining LPA No.660 of 2003 to proceed with the admission process in accordance with the Rules, does not mean that admission to the current academic year must be given accepting that the said GR in force for all Government Medical Colleges and all Universities in the State have an obligation to adopt it forthwith. Therefore, the argument advanced in this regard is also not found acceptable.

19. Ld. Senior Counsel Mr. S.N.Shelat appearing for the Bhavnagar University has positively accepted that a preference has been given to the students who have cleared their final MBBS examination in May-2001 vis. students of 1st batch and it can technically be said that the amendment in rule is to an extent different than the uniform pattern. However, in view of the ratio laid by the Apex Court in the decision in the case of Azeez Basha (supra), the say of the university should be appreciated in light of the affidavit (P.66) annexed with second petition viz. Spl.C.A. No.4635/2003 The say of the University is reflected in para-4 of the affidavit and to appreciate the say of the University, it is necessary to quote the same for convenience which runs as under:-

> "4. Bhavnagar University is incorporated by the Bhavnagar University Act, 1978 as amended by Act No.7 of 1987. I submit that Section 23 thereof provides for Faculty. I submit that the Faculty of Medicine is a body constituted under the Act representing the teachers, experts in the subject. Faculty of Medicine has the general control and power of regulation and is responsible for the maintenance of standards of teaching and examinations of the University for the subject comprised in it. I submit that the Faculty of Medicine proposes and recommended the rules for admission to Post Graduation Course of Bhavnagar University. The Executive Council of the University and the Academic Council approved the said rules and the Rules so framed by the Academic Bodies of the Universities, govern admission to the Post Graduate Course of Bhavnagar University. "

20. Backbone of the arguments of ld. Sr.Counsel Mr. Shelat is that reasonableness of the Rules can not be challenged by invoking the jurisdiction of this Court under Article 226 of the Constitution if it is appropriately brought on record that it has some logic and there is no element of either malafide or arbitrariness. Mere allegation of malafide or arbitrary

action is not sufficient and, therefore, in absence of any cogent facts and convincing circumstances, reasonableness of Rules framed by the University or amended by such statutory body should not be subjected to judicial review. It is not submitted by anybody before the Court that University by amending rules has attempted to classify the students and the same has resulted into discrimination when ultimately the merit is taken care of. 2nd part of the exemption emerging from the Rule is the complete reply to the apprehension expressed by the petitioner of the second petition. To appreciate the say of ld. counsel Mr. Gandhi and ld. Sr.Counsel Mr. Shelat, I would like to quote Rule 4.1 with explanation which has been taken into account by the Admission Committee while offering admissions to the students in PG Course:

"4.Selection : Selection of candidates eligible under Rule 1 for seats under Rule 3.0 will be done categorywise on the basis of merits as laid down herein further;

4.1 Preference shall be given to candidates of not more than 1 year standing after completion of internship graduating from this University. (For the first batch of May 2001, Students shall be exempted, for the first year admissions).

4.2 xxx xxx xxx

Explanation of PG Rule No.4.1 is as under:-

4.1 All interview for Post Graduate Courses, three groups of students will be eligible at a time as specified here for interview in JULYAUGUST, 2003; i.e.

(1) Their IIIrd M.B.B.S. Exam in September, 2000 & completed their internship in December, 2001.

(2) Their IIIrd M.B.B.B. Exam in May,2001 & completed their internship in August, 2002.

(3) Their IIIrd M.B.B.S. Exam in December,2001 & completed their internship in February, 2003.

It means after every admission the first or senior or previous interviewed batch will be eliminated & all subsequent batch will be included. "

21. The second part takes care of Article 14 of the Constitution of India. The decision of the Apex Court in the case of Krishna Priya Ganguly etc. etc. v/s University of Lucknow and others, AIR 1984 SC 186, if considered, then observations of the Apex Court in para-18 of the decision strengthens the case of the University. Relevant observations in para-18 of the said decision reads as under:-

" We might mention that this concession was made because the candidates concerned had secured pretty high percentage and since they had completed the course in the peculiar facts and circumstances of the case. As far as C.A. No.3045/82 filed by the State against the decision of the High Court is concerned, the view taken by the High Court is unsustainable. The High Court could not have given a go-by to the rules framed by Admission Committee. It was a matter for decision of the academic body and since the academic body had applied for rules in a bona fide manner to all the students equally, there was no jurisdiction whatsoever on the part of the High Court to interfere with the internal working of an academic institution concerned with imparting higher education in the field of post-graduate course in medicine. The Rule prescribing that housemanship must be in the same subject is not inconsistent with the Ordinance. It is supplementary to the Ordinance and amplifies the same. Hence, there is no inconsistency and the High Court was therefore clearly wrong."

From the same volume viz. AIR 1984 SC, ld. Sr.Counsel Mr. Shelat cited another decision in the case of Maharashtra State Board of Secondary and Higher Secondary Education and another v/s Paritosh Bhupesh Kurmarsheth etc. etc. reported at page 1543. I would like to quote relevant part from that decision viz. para-16 which reads as under:-

"16. In our opinion, the aforesaid approacer made by the High Court is wholly incorrect and fallacious. The Court can not sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation

> will not render it ultra vires and the Court can not strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of regulation-making power or is being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution. None of these vitiating factors are shown to exist in the presence case and hence there was no scope at all for the High Court to invalidate the provision contained in cl.(3) of Regn.104 as ultra vires on the grounds of its being in excess of the regulation-making power conferred on the Board......."

22. When University was started its PG Courses for the first time after giving clearance from Medical Council, it has decided to give an opportunity to its first batch students. On appreciation of these submissions, the Court finds that there is force in the submissions of ld. counsel Mr. Gandhi that 1st batch students have been wrongly branded as "late-latifs" and there was no scope for them to step into the Bus because there was no P.G.Course in the only medical college affiliated with Bhavnagar University and ld. counsel appearing for the parties and practically all have fairly conceded that because of limited seats in each medical college affiliated with one university or the other, then the students have no scope for entry in PG Course if one intends to get admission in other university other than their own university. So, to avoid the frustration of the students of first batch, they have been given preference to compete with students of regular batch and that too on merits and criteria of merit has not been given go-by and amended Rule.4.1A takes care of the contingency which is likely to crop up. It is rightly submitted by ld. counsel Mr. Gandhi that Rule 4 has been amended in accordance with the Scheme. Rule 10 of Admission Rules authorises the University to introduce any new Rule or Regulation or make changes in any of the existing Rules or Regulations at any time to deal with

diverse problems arising out of infinite veracity of situations. So, the University authority after considering special facts situation has decided to give preference to the first batch students. The decision of the Apex Court in the case of Jayesh A. Joshipura (supra) cited by ld. Sr.Counsel Mr. Shelat goes to the root of the disputes raised by the petitioners. When the action of the authority of the Govt. Medical College is not found either arbitrary or malafide, reasonableness of the Rule or decision taken by the educational institution University as a domestic institute can not be brought under judicial review/scrutiny. So, division made by giving preference to first batch student and permitting them to compete for PG study by itself would not become either prejudicial or illegal if there is an element of reasonableness emerging from the action of the University. Referring to paras 26, 29, 40 & 44 of the said decision and especially the observations made by the Apex Court in the case of P.Rajendra V/s State of Madras, AIR 1968 SC 1012, it is conveniently argued that it is now well settled that the task of lying down guidelines for admission to be effected from given sources remains in the realm of a policy decision left to the executive. It would be proper to quote para-44 which runs as under:-

"44. It is now settled that the task of laying down guidelines for admissions to be effected from given sources remains in the realm of a policy decision left to the executive. in that view of the matter, if the executive in exercise of its powers makes a policy decision to restrict entry of students to the medical course in the given year by putting upper limit to the number of qualifying examinations which can be taken into consideration for drafting students to medical courses starting year after year, it cannot be said that such a policy decision is unreasonable or that classification or subclassification effect thereby is necessarily irrational. In my view, looking to the number of seats available in the given year and keeping in mind the fact that the students available in the given year and keeping in mind the fact that the students passing the qualifying examination in earlier years had already exhausted their chance for being considered for admission and had lost in the contest in view of their lower merits reflected by their marks, if they are excluded from future contest, it cannot be said that such exclusion made by the executive is unreasonable from any point of view. It must, therefore, be

held that sub-classification of students otherwise similarly situated from a broad point of view as well as all of them had passed the qualifying examination, is not unreasonable from any view point."

23. In the decision in the case of Azeez Basha (supra) cited by ld. counsel Mr. Mangukia in support of his submissions, the relevant portion of the observations made by the Apex Court in para-34 of the said decision, reads as under:-

"...There can be no question of discrimination on the ground that some other University-Acts provide for some different set up.Each university must be taken to be a class by itself and the legislature has a right to make such provision for its constitution as it thinks fit subject always to the provisions of the Constitution. The mere fact that certain provisions in a statute creating one university are different from provisions in another statute creating another university cannot mean that there is discrimination."

The ratio laid down in the above decision takes care of the logic advanced by ld. Counsel Mr. Mangukia that in one petition the University can not be prevented from adopting different pattern for admitting students and in another petition it is permitted to deviate from the pattern followed by other universities.

24. The say of the present petitioners is also considered in light of the above-said discussion qua GR dated 2.6.2003 and the submissions advanced before the Court by ld. AGP Ms. Panchal. For short, I do not find any merits in the second petition viz. Spl.C.A. No. 4635/2003 and requires to be dismissed.

25. In view of above, first petition being Spl.C.A. No. 3872/2003 is hereby allowed. Rule is made absolute accordingly. The second petition viz. Spl.C.A. No.4635/2003 is dismissed. Rule discharged. No costs in both the petitions. It is clarified that these findings are recorded without entering into the larger question relating to the validity of modified policy applying reservation roster vide GR dated 2.6.2003 as per the observations made in this regard.

26. Sealed Envelope lying with the Registry is ordered to be given back to ld. counsel appearing for the admission authority namely college authority so as to

handover the same to the college authorities and college authorities are directed to proceed further with admission procedure in light of the selection made by the Committee as per the list lying in the sealed envelope. Directions accordingly to the Registry.

27. Ld. counsel Mr. Mangukia appearing for respondent no.5 in Spl.C.A. No. 3872/2003 and for petitioner in Spl.C.A. No. 4635/2003 has requested that decision of this Court be placed under abeyance/ suspension as concerned aggrieved parties intent to approach higher forum. According to ld. counsel Mr. Mangukia, if the stay is refused, then entire remedy would frustrate and admission of students in PG Course would make respondent no.5 of Spl.C.A.3872/2003 and petitioner of Spl.C.A.4635/2003 disentitled from entry in the PG Course. So, to prevent serious prejudice to them, decision pronounced today requires to be placed under abeyance/suspension and that this arrangement can be made at least till copy of the order is made available to him. I have carefully considered these submissions of ld. counsel Mr. Mangukia. However, in view of facts and circumstances of the case and discussion made as above, and considering all relevant circumstances, the request of placing the decision under abeyance is hereby refused.

Date; 14.10.2003 [C.K. BUCH, J]

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